

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

DOLORES MATYS,
Appellant

v.

D-03-295

MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Dolores Matys (hereafter "Appellant"), is appealing the action of the Massachusetts Department of Environmental Protection (hereafter "the Department") for allegedly unlawfully and

inappropriately laying her off. The appeal was timely filed. A hearing was held on November 30, 2006 at the offices of the Civil Service Commission. At the hearing, the Department submitted a Motion to Dismiss, which was taken under advisement. As no written notice was received from either party, the hearing was declared private. One tape was made of the hearing.

FINDINGS OF FACT:

Four exhibits were entered into evidence (Joint1-4). Based upon the documents entered into evidence and the testimony of:

Dolores Matys, Appellant; and

John Viola, Acting Director of Workforce Services

I make the following findings of fact:

1. The Appellant, Dolores Matys, has been a civil service appointee since 1985, working in the Department of Watershed Management within the Department of Environmental Protection (“the Department”) throughout her employment. At the time of her retirement, Appellant was an Administrative Assistant I, with permanent civil service status since March 1993. (Testimony of Appellant)
2. Due to a fiscal crisis in the Commonwealth in late 2002, the Department was forced to conduct layoffs that ultimately resulted in approximately twenty-four percent of the staff being laid off. John Viola, Acting Director of Workforce Services, testified that the Department experienced three rounds of layoffs between November 2002 and June 2003, among then “massive layoffs” in June 2003. (Exhibit 4 and testimony of Viola)

3. On or about May 29, 2003, Appellant was notified by letter from the Department's Deputy Commissioner that for reasons of economy the Department would be instituting a reduction in work force. The letter stated that the Department was contemplating terminating Appellant's services as of June 28, 2003, because her job title was being eliminated across the agency due to of fiscal constraints and the reduced need for the Administrative Assistant I position in the agency's programmatic services. The letter stated that the Department would retain several Administrative Assistant Is based on seniority and informed Appellant of her right to a full hearing on the contemplated termination. (Exhibit 1)

4. That day, May 29, 2003, Appellant notified the Director of Labor Relations that her job title was being eliminated.

5. On June 6, 2003, Appellant attended a Department hearing and was informed in a lecture-style setting about lay-offs. The Department stated that it would hold individual meetings with employees. Appellant testified that she waited for over ninety minutes and no one from the Department met with her. (Testimony of Appellant)

6. Appellant received an email message, dated June 6, 2003 at 4:36 pm, from the Department's then Director of Workforce Services. It read, "Options for bumping cannot be communicated until Monday late morning, but I can tell you that your civil service status appears to offer you the ability to remain in your grade." This email implies the Director was responding to an inquiry by Appellant.

7. In order to retain her job and in accordance with her civil service rights, Appellant bumped an Administrative Assistant I in the DEP Central Office, Worcester. On July 7, 2003, Appellant became the Administrative Assistant I for the Central Office. Appellant

testified that she was forced to use her bumping rights when she received notice that she would be laid off, and that the individual she bumped was a provisional employee who was allowed to remain employed pending proposed legislation of early retirement incentive benefits. (Testimony of Appellant)

8. Appellant remained in her position throughout July and August 2003. She testified that during that time she began working for a new supervisor who repeatedly told her that more cuts would be occurring in December 2003. (Testimony of Appellant)

9. On July 24, 2003, the Human Resources Division of the Massachusetts Executive Office for Administration and Finance released an Early Retirement Incentive Program (“ERIP”) as an option for employees who met certain parameters. The ERIP provided an employee the benefit of adding five years to either years of service or age in order to increase the amount of retirement benefits. (Exhibit 2)

10. On August 1, 2003, Appellant chose to take advantage of the ERIP and notified the Department that her last day of work would be October 1, 2003. With the additional five years added to her retirement benefits, Appellant retired with 46% of her annual salary. (Exhibit 3)

11. Appellant testified that she did not want to retire but was “scared” into retiring as she was afraid of future layoffs occurring and being laid off with minimal retirement benefits. She testified that without the fear of being laid off, she would have remained in her position until age 65, an additional 5.5 years, and therefore would have received increased retirement benefits. (Testimony of Appellant)

12. Appellant testified that subsequent to her retirement, she attempted to return to work for the Department by requesting a 120-day appointment for supplemental income but the Department did not offer her this appointment. (Testimony of Appellant)

13. Appellant was a highly emotional witness and clearly upset by the events beginning with the receipt of the May 29, 2003 letter stating her job title was being eliminated.

Based on her emotional testimony recounting her supervisor's repeated comments that additional layoffs were coming, it was believable that she felt pressured to opt for the ERIP.

14. Viola was a credible witness and offered clear and believable testimony concerning Department and state lay-off and retirement-related policies and procedures.

CONCLUSION

The evidence presented showed that Appellant was actually not laid off by the Department as she alleged. Notwithstanding the May 29, 2003 layoff notice that she received, she was never separated from her employment. Rather, the chronology of events shows that when informed of the elimination of her position on May 29, 2003, Appellant bumped another Administrative Assistant I employee and subsequently continued working as an Administrative Assistant I and receiving paychecks throughout June and July, 2003. On August 1, Appellant took advantage of the ERIP option available to her and voluntarily retired on October 1, 2003. Despite Appellant's credible statements about feeling "forced" to retire, documentary evidence including the May 29, 2003 reduction in work force letter received by Appellant, and Viola's credible

testimony, Appellant did not demonstrate that the Department laid her off prior to her opting for early retirement.

Appellant also argues that the Department violated G.L. c. 31, § 39 by permitting the provisional employee that she bumped to remain on the job while she, a permanent employee, was laid off. Appellant's contention is moot due to her voluntary retirement.

In sum, Appellant has failed to state a cause of action on which relief can be granted. The Department's motion to dismiss Appellant's complaint, submitted at the start of the hearing, should be granted. The Commission may dismiss a matter on the motion of a party for, among other circumstances, the "lack of jurisdiction to decide the matter." 801 CMR 1.01 (7) (g)(3). Since the Appellant was not laid off, the motion to dismiss due to lack of jurisdiction is granted.

For all of the above reasons, the appeal under Docket D-03-295 is hereby *denied*.

Civil Service Commission

John Taylor,
Commissioner

By vote of the Civil Service Commission (Bowman, Guerin and Marquis; Commissioners [Taylor – Absent]) on March 15, 2007.

A True copy. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

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